IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WA.No. 2363 of 2007

(AGAINST THE JUDGEMENT IN WPC.27113/2007 Dated 17/09/2007)

APPELLANT/1ST RESPONDENT IN THE WP(C):

G. ACHUTHAN PILLAI,
KRISHNA BHAVAN,
CHERUTHANA P.O., KARUVATTA,
ALLEPPEY DISTRICT.

BY ADV. SRI.J.S.AJITHKUMAR.

RESPONDENTS/ PETITIONER & RESPONDENTS 2 TO 5 IN WP(C):
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1. K. SATHEESH KUMAR,
S/O.KUMARAN NAIR,
KALATHARA VILAKATHU VEEDU,
PULLAYIL, VELIYAMKODE P. O.,
TRIVANDRUM.

2. KERALA STATE POLICE CID STAFF
CO-OPERATIVE SOCIETY LTD.NO.T.322,
TRIVANDRUM,
REPRESENTED BY ITS SECRETARY.

3. THE UNIT INSPECTOR,
RETURNING OFFICER,
KERALA STATE POLICE CID STAFF
CO-OPERATIVE SOCEITY LTD.NO.T.322,
TRIVANDRUM.

4. KERALA CO-OPERATIVE TRIBUNAL,
TRIVANDRUM.

5. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL),
TRIVANDRUM.

BY SPL. GOVERNMENT PLEADER SMT. A.G. ANEETHA.
BY ADV. SHRI V.G. ARUN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 2363 OF 2007

Dated this the 28th September, 2007

JUDGMENT

H.L.DATTU, C.J.

A defeated candidate in the election held in the second respondent Society is before us in this appeal. He calls in question the correctness or otherwise of the orders passed by the learned single Judge in W.P.(C) No.27113 of 2007, dated 17th September, 2007. By the impugned order, the learned Judge has directed the Tribunal to dispose of the appeal filed by the petitioner in the Writ Petition and in the meanwhile, has restrained the 5th respondent from taking any steps for appointment of an Administrator to manage the affairs of the second respondent Society.

2. The facts in nut shell are: Petitioner in the Writ Petition is the President of the second respondent Society, which is registered under the provisions of the Co-operative Societies Act. The first respondent in the Writ Petition was a defeated candidate in the election held for the second respondent Society.

3. Aggrieved by the declaration of the results of the election held to the second respondent Society, the first respondent in the Writ Petition had filed an Election Petition before the Co-operative Arbitration Court as provided under Section 69 of the Co-operative Societies Act. The Co-operative Arbitration Court has allowed the Election Petition by its award dated 9.8.2007. Being aggrieved by the award passed by the Co-operative Arbitration Court, the petitioner has filed an appeal as provided under Section 82 of the Act. Along with the appeal, he has also filed an application for granting an interim order of stay, staying the award passed by the Co-operative Arbitration Court.

4. Section 86 of the Act provides for grant of interlocutory orders by the

Tribunal if an appeal is filed under Section 82 of the Act. The said section authorises the Tribunal to grant such interim orders, in order to prevent the ends of justice being defeated.

5. The Tribunal in the present case, without considering the application filed for grant of an interim order, has issued notice to the respondents in the appeal on the main prayer as well as on the application filed for grant of stay. Since the Tribunal had not taken any decision on the said application filed, the petitioner has approached this Court for the following reliefs:

i) issue a direction to the Tribunal to pass orders on the stay petition filed by the petitioner in A.P.No,.28 of 2007, pending before the Tribunal.

ii) to declare that the elected committee of the Board of Management of the second respondent society is entitled to continue in office till a decision is taken by the Tribunal.

6. By way of an interim relief, the petitioner had also sought for stay of all further proceedings for appointing an Administrator to the second respondent Society pursuant to the award passed by the Co-operative Arbitration Court.

7. The learned single Judge, keeping in view that the petitioner was duly appointed as President of the second respondent Society and also keeping in view that the said election has been set aside by the Co-operative Arbitration Court and in the meanwhile, there should not be an Administrator to manage the affairs of the society, has thought it fit, firstly, to direct the Tribunal to decide the appeal or in the alternative to decide the application for grant of stay and till such time, no Administrator should be appointed to manage the affairs of the second respondent society.

8. Aggrieved by the aforesaid order passed by the learned single Judge,

the defeated candidate/first respondent in the Writ Petition has filed this Writ Appeal.

9. Learned counsel appearing for the appellant would contend before us that since the election to the second respondent Society has been set aside by the Co-operative Arbitration Court, there would be vacuum in the Society and that vacuum requires to be filled by the Registrar of Co-operative Societies by appointing an Administrator to manage the affairs of the Society and therefore, the learned Judge should not have intervened and should not have prevented the appointment of an Administrator by the Registrar or Joint Registrar of Co-operative Societies.

10. We are not impressed by the contention canvassed by the learned counsel for the appellant.

11. Admittedly, petitioner is elected as the President of the second respondent Society in the election held, to elect the members of the Managing Committee of the Society, and the first respondent is a defeated candidate in the said election. The first respondent had called in question the election held in the second respondent Society before the Co-operative Arbitration Court. The Co-operative Arbitration Court has passed an award allowing the Election Petition filed by the first respondent. During the pendency of the Election Petition, petitioner and other members of the Managing Committee of the Society were managing the affairs of the Society.

12. Aggrieved by the award passed by the Co-operative Arbitration Court, the petitioner has filed an appeal before the Tribunal as provided under Section 82 of the Act. Along with the appeal, as we have already noticed, a stay petition was

also filed. It was expected that the Tribunal should have considered the stay petition one way or the other. In fact, Section 86 of the Act specifically authorises the Tribunal to consider an interim application to prevent the ends of justice being defeated. The Tribunal, for the reasons which we are not aware, has thought it fit to issue notice of the appeal and the stay petition to the respondents. In matters of this nature, the Tribunal is expected to act swiftly and inform the parties about the stay application filed by the appellant, so that the person aggrieved by the order made may take recourse before any other superior forum. The inaction or failure on the part of the Tribunal to exercise this discretion defeats the petitioner's right of appeal. This inaction on the part of the Tribunal is taken note of by the learned single Judge while disposing of the Writ Petition and, therefore, has thought it fit to direct the Joint Registrar of Co-operative Societies not to appoint an Administrator till the Tribunal decides the appeal or the application for grant of an interim stay filed by the petitioner. In our opinion, the order so passed by the learned Judge in no way can be characterised as erroneous and illegal. Therefore, interference of the said order is not called for. Accordingly, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.